

UNITED STATES BANKRUPTCY COURT FOR THE
DISTRICT OF SOUTH CAROLINA

IN RE:) CASE NO.18-02612-jw
ANGEL MARIE STITH,) ADVERSARIAL CASE NO.
DEBTOR,) CHAPTER 13
ANGEL MARIE STITH,)
Plaintiff,)
vs.) **COMPLAINT**
SOUTH CAROLINA DEPARTMENT OF)
EMPLOYMENT AND WORKFORCE,)
Defendant.)
_____)

COMPLAINT

Plaintiff, Angel Marie Stith, brings this action to enjoin Defendant's conduct and recover damages by reason of the Defendant's violation of the Bankruptcy Code, and alleges:

JURISDICTION AND VENUE

1. This Honorable Court has jurisdiction of this action and over the parties herein.

PARTIES

2. Plaintiff, Angel Marie Stith, is a resident and citizen of the State of South Carolina residing in Horry County, from whom South Carolina Department of Employment and Workforce, herein after referred to as "SCDEW", attempted to collect a debt.

3. Defendant, SCDEW, is a department of the State of South Carolina that acted as a debt collector in South Carolina.

***FACTUAL ALLEGATIONS
FIRST CAUSE OF ACTION***

4. Plaintiff on May 18, 2018 filed for Chapter 13 bankruptcy relief in the District of South Carolina. Her bankruptcy case number is 18-02612. The Debtor listed and scheduled a debt owed to SCDEW in her bankruptcy petition and schedules. That on September 4, 2018 the creditor SCDEW filed a Proof of Claim Number 12 in the Plaintiff's bankruptcy case in the amount of Five Thousand Six Hundred Eighty One and 21/100 (\$5,681.21) Dollars. That Debtor filed a Chapter 13 Plan in her case which dealt with all of her debts including the debt and claim owed to SCDEW. That on September 6, 2018 the Plaintiff's Chapter 13 Plan was confirmed by Court Order signed by the Honorable John E. Waites, Chief United States Bankruptcy Judge for the District of South Carolina. That on or about January 25, 2019, the Defendant caused the Plaintiff's tax refund

for 2018 in the amount of Nine Hundred Sixty One (\$961.00) Dollars to be intercepted by the South Carolina Department of Revenue and paid unto and to the Defendant for the same debt that the Defendant had filed it's Proof of Claim on and for. The Plaintiff was also charged a Twenty Five (\$25.00) processing fee by and to the South Carolina Department of Revenue. That a copy of said tax refund intercept letter is attached hereto and incorporated by reference herein as Exhibit "A".

5. The Defendant was notified of the Plaintiff's bankruptcy filing yet has willfully and deliberately chosen to ignore the Order of Confirmation in the Plaintiff's bankruptcy case and illegally and wrongfully intercept monies which has and will result in the Defendant being overpaid on it's claim concerning this Chapter 13 Debtor and allows and permits the Defendant to double dip and violate the Order of Plan Confirmation in this Chapter 13 case.

6. Plaintiff would show that SCDEW's interception of her tax refund was done to cause and did cause the Plaintiff substantial financial hardship as she was going to use the tax refund monies for necessary medical treatment that she otherwise could not afford and with the intent to annoy, abuse, intimidate or harass her and she has sustained actual damages as a direct and proximate result.

7. That SCDEW's interception of the tax refund of the

Plaintiff violates the confirmed plan of Debtor and also violates 11 U.S.C. Section 362.

8. That SCDEW has engaged in acts which constitute a flagrant and willful violation of a Chapter 13 plan confirmation Order of this Honorable Court and the bankruptcy automatic stay.

9. Defendant's violation of the Bankruptcy Code and this Court's Chapter 13 Confirmation Order renders it liable to the Plaintiff for statutory damages, costs, punitive damages and reasonable attorney's fees.

**FOR A SECOND CAUSE OF ACTION
(NEGLIGENCE)**

10. That the Plaintiff realleges all of the allegations contained in paragraphs one through nine as if the same were set forth verbatim herein.

11. That the Plaintiff would show that the Defendant was negligent, grossly negligent, willful and wanton in the following particulars to wit:

- (a) In failing to properly and reasonably handle the Plaintiff's account, bankruptcy notification and the bankruptcy notice it received from the Court;
- (b) In failing to use due care;
- (c) In failing to take adequate and reasonable measures so that the Plaintiff would not be overpaying in excess of what was Ordered in her Chapter 13 Plan regarding her debt and account with Defendant;
- (d) In contacting the Plaintiff about her account and collecting a debt from her after the

Defendant knew she had filed for bankruptcy protection and relief;

- (e) In engaging in conduct that violated the bankruptcy laws and Bankruptcy Court Order;
- (f) In filing a proof of claim then attempting to collect more money from the Plaintiff on the same debt;
- (g) In sending an interception request of the Debtor's tax refund when it knew it's claim and debt was, and is, being paid in the Debtor's Chapter 13 Plan and case.

12. That as a direct and proximate result of said negligent acts and or delicts of the Defendant, the Plaintiff has suffered actual damages including emotional distress, emotional anguish, attorney fees, embarrassment and humiliation in an amount to be determined by this Honorable Court.

**FOR A THIRD CAUSE OF ACTION
(Disgorgement pursuant to 11 U.S.C. 105)**

13. That the Plaintiff realleges all of the allegations contained in the first and second causes of action as if the same had been set forth herein verbatim.

14. That the Plaintiff is a party in interest and request relief pursuant to 11 U.S.C. 105 to prevent an abuse of process by the Defendant including an Order requiring the Defendant to disgorge the monies and tax refund of the Plaintiff. The Plaintiff would show that the Defendant was entitled to be paid only what was owed to it and not a penny more and that by obtaining the Plaintiff's tax refund it is

getting more than what is owed to it under the Debtor's confirmed chapter 13 plan.

**FOR A FOURTH CAUSE OF ACTION
(11 U.S.C. 542)**

15. That the Plaintiff hereby reaffirm and reallege the allegations contained in the first, second and third causes of action as if same had been set forth herein verbatim.

16. That the Plaintiff seek the turnover of monies and property of the estate that the Defendant took and to which the Plaintiff should be allowed to exempt. The Plaintiff also seeks actual damages and attorneys fees as against the Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that this Court:

1. Declare that the Defendant's policy, conduct and or behavior in it's debt collection violates the Order of this Court filed September 6, 2018 confirming the Debtor's Chapter 13 Plan; enter an injunction against Defendant prohibiting Defendant from intercepting the Debtor's future tax refunds and requiring the Defendant to refund and pay the Plaintiff back all of said tax refund monies intercepted by it;

2. Enter judgment in favor of the Plaintiff in the First Cause of Action and against the Defendant for statutory damages, actual damages and costs as provided by 11 U.S.C.

Section 362 and the Bankruptcy Code;

3. Award the Plaintiff costs and reasonable attorneys

fees as provided by 11 U.S.C. Section 362; 11 U.S.C. 105 and 11

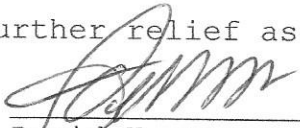
U.S.C. 542;

4. Enter judgment in favor of the Plaintiff in the the Second Cause of action for negligence in an actual amount to be determined by this Honorable Court for actual damages plus an award of punitive damages;

5. Enter an Order and or judgment in favor of the Plaintiff requiring the Defendant to disgorge the monies it intercepted from the Plaintiff along with an award of reasonable attorney fees and costs;


6. Enter an Order and or judgment in favor of the Plaintiff requiring the Defendant to turnover property to which the Debtor could have exempted along with an award of damages, attorney fees and costs;

7. Grant such further relief as deemed just.



David H. Breen

District Court ID No. 1459



Matthew M. Breen,

District Court ID No.12694

Attorneys for Plaintiff

1341 44th Avenue North, Suite 200

Myrtle Beach, SC 29577

843-445-9915

February 1, 2019

Myrtle Beach, South Carolina

1350 A



STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
Notice of Adjustment to Overpayment

I-351
(Rev. 12/19/18)
3524

SSN: ***-**-7399
Letter ID: L0009356580
Date Issued: January 25, 2019

ANGEL STITH
8455 S HIGHWAY 905
LONGS SC 29568-6748



Taxpayer:

Notice is hereby given that the SC Department of Revenue, pursuant to Section 12-56-20, has levied upon and seized funds due you as a refund of: Individual Income Tax for period ending 31-Dec-2018. A \$25 administrative fee has been charged by the SC Department of Revenue in accordance with 12-56-60(B).

Part of your refund has been applied to outstanding debt with the agency(s) listed below. If you have any questions, you must write or call the appropriate agency(s) listed below.

Agency Contact Information

SC DEPT OF EMPLOYMENT AND WORKFORCE
PO BOX 995
COLUMBIA SC 29202
UI COLLECTIONS UNIT
(803) 737-2490

SSN/ITIN #

***-**-7399

Amount Transferred

\$961.00

Your overpayment	\$986.00
Total applied to receivable(s)	\$961.00
Remaining balance due on receivable(s)	\$4,591.51
Applied as a Credit Carryforward to Estimated Tax Account.....	\$0.00
Applied to Contribution Checkoff(s).....	\$0.00
Amount to be refunded	\$0.00

- Remaining balances are current as of the printing of this letter and may reflect transactions in addition to the levy described above.
- Section 12-54-25 accrues additional interest to date of payment.
- Section 12-54-40 accrues additional penalty to date of payment.

South Carolina Department of Revenue
Taxpayer and Business Services
1-844-898-8542

JP:951E:00355S:010IN:0A#:Y1211785760J:0000109492



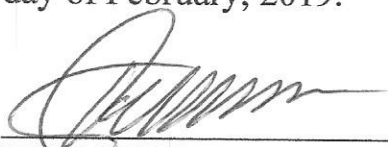
VERIFICATION

PERSONALLY APPEARED before me, Angel Marie Stith, who being duly sworn, deposes and says that she is the Plaintiff in the foregoing Adversarial Complaint against South Carolina Department of Employment and Workforce, and that she has read the matters contained in the Complaint and know same to be true and correct to her own knowledge, information and belief.



ANGEL MARIE STITH

Sworn to before me this 1st
day of February, 2019.



(L.S.)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 1-21-2025